1944. **File No.** O. Arbitration/44

Legal Department

A **BRANCH**

Subject:— Opinions under the Arbitration Act, 1940.

E
1-10

File No. O. Arbitration /44

Gen. 194 e.

167-2

C O N T E N T S.

Legal Department Vale No. O. Arbitration/1944.

Sr. No.	R.I. / O. No.	Subject	Pages.
		Opinions under the Arbitration Act, 1940.	
1.	O. Arbitration/1944		
	286/1944 1049 6-2-44.	Re: Manmad Electric Supply Company. Agreement between the Coy. and the Railway. Appointment of Arbitrators to settled the dispute between the Company and Rly. (Please also see R.L.A's No. 6765 dated 9-10-43).	1-2.
2.	911 29-6-44. 5651 11-8-44.	Re: Agreement entered into between the Bombay Municipality and the Bandra Municipality. Question whether in view of fact that the Agreement has not yet been executed by the parties the Bandra Municipality can approach the Chief Engineer to Govt. for arbitration under clause (13) of the Agreement.	3-6.
3.	297 11-1-45 882 29-1-45.	Re: - do -	7-8.
4.	1316 14-2-45.	Re: - do -	9-10.

EVI. 27/8.

28/8/18

28/8/18.

L.D.R.I.No. 286/44.

Submitted.

Please see P.W.D. corr. at p. 89 ante. This case was previously referred to R.L.A. Please see R.L.A.'s opinion No. 6765 dated the 9th October 1943 in this connection. In that opinion R.L.A. had advised P.W.D. to ascertain the views of the Manmad Electric Supply Company regarding the appointment of an arbitrator. It appears that a reference was made to the company and in reply the Company has stated that it is not willing to submit to arbitration as (1) the agreement between the company and the Rly. is terminated and that (2) the officer named in the agreement does not exist. The company further states that if inppite of its protest arbitrator is appointed it will appear under protest. P.W.D. has requested R.L.A. to advise in these circumstances.

Under section 4 of the Arbitration Act, the parties to an agreement can refer a dispute to arbitration. In the present case, clause 14 of the agreement provides for such a reference to artitration. But (1) the agreement has been terminated and (2) one party is unwilling to refer to question to arbitration. It would appear therefore that the parties would have to go to a Court of Law to have the dispute settled. Under clause 14 of the agreement Govt. was to appoint as arbitrator but if one of the parties in unwilling there is no point in making the appointment.

Id/- N.P.R.

19/1

S.A.S.

A./ It appears that the Manmad Electric supply company is contending that the arbitration agreement is no longer operative and is unwilling to submit to arbitration. The proper course therefore for the ---- ~~G.~~G.I.P. Rly to follow appears to be to apply to the court for an order regarding the appointment of an arbitration is this matter/A

Id/- R.T .K.
27/1

A.L.R.

I agree.

Reply may be S.A.S's note as amended, I am note sure whether section 33 would cover the present case, so I have put it more generally.

Id/- R.S.P.
1/2

R.L.A.

I concur. In view of the unwillingness of the Company to refer the dispute to arbitration the only alternative left is for the Rly. to apply to the Court. Reply as suggested.

Id/-
P.N.H.
5/2

SSM / 5/7/56.

Reply 1-A
UR W P.W.D. No 1049/8-2-44

R.I. No. 813
29-6-44.

Submitted.

2. The facts of the case are fully stated at page 9.

3. The Bombay Municipality had applied to the Bandra Municipality for permission for carrying out the work of "raising he the level crossing at SantaCruz Vakola of Military road to the present level", stating that the bill for restoration of the road might be sent to them in duplicate. ~~When~~ When the bill was presented, the Hydraulic Engineer, Bombay Municipality, contended that as the work in question was necessitated on account of the work carried out by the Bandra Municipality ~~on account of the work carried out by the Bandra Municipality~~ on either side of the tramway track, the Bandra Municipality should bear the cost of the work. The Chief Officer of the Bandra Municipality informed the Bombay Municipality that under clause (1) of the Agreement that is to be entered into between them, the work of keeping the tram track at level with the surrounding road way devolves on the Bombay Municipality. But the Hydraulic Engineer contended that the agreement is not applicable in the present case as this work was necessitated on account of the former level of the surrounding roadway having been disturbed and raised owing to the repairs carried out by the Bandra Municipality.

4. Clause 13 of the agreement to be entered into between the Bombay Municipality and the Bandra

Municipality and the Bandra Municipality stipulates that "any difference of opinion between the Corporation and the parties hereto in connection with this agreement shall be referred to the Chief Engineer to Government and his decision is final and binding on all the parties".

5. The Chief Officer of the Bandra Municipality has referred the matter for arbitration to the Chief Engineer to Government as provided in clause (13) of the Agreement.

6. The question for condideration is whether in view of the fact that the Agreement has not been yet executed by the parties, the Bandra Municipality can approach the Chief Engineer to Government for arbitration under clause (13) of the Agreement.

7. In Shankerlal v/s Jainy Bros. 83 All 384, the Allahabad High Court has held that the phrase "written Agreement" did not mean that each party had to sign the document. The signature is not a necessary ingredient. All that is necessary is that both the parties accept a written document containing the agreed terms. In Umed Singh v/s Seth Sohagmal 43 Cal. 290 P.C. the Privy Council held that the writing was not necessarily required to be signed by the parties. The terms of the Agreement in question are on the lines of usual terms contained in the water pipe Agreements and the Government has given the necessary permission to the Corporation only on the terms and conditions contained in this Agreement, and from the correspondence at pages 101-113 the Corporation appears to have formally accepted the conditions of the Agreement. Under these circumstances the Bandra Municipality can refer the dispute to the Chief Engineer under clause 13 of the

13 of the Agreement though the Agreement has not been yet executed. The view expressed on page 3 of the P.W.D. note at page 16 does not appear to be correct.

Id/- M.G.P.
4/7

I am inclined to agree but as the question relates to a dispute between two Municipalities the same might be determined by A Br.

Sd/- R.D.N.

'A' Br.

Id/- 5/7.

SSM / 5/7/56.

Office of the R.L.A.

In the absence of any proof that both the Bandra Municipality and the Bombay Municipality have agreed to clause 13 of the draft agreement at page 1 ante the Chief Engineer cannot act as arbitrator. There may be a legal agreement without signature of a written agreement but there is nothing in the present papers to show consent of parties to terms of the agreement, particularly the arbitration clause.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 5651, dated the 11th August 1944

SSM/ 5/7/56.

R.I. No. 297 Dt. 11.1.45.

Submitted.

Pl. see R.L.A's opinion No. 5651, dated 11th August 1944 and the office note dated 11.7.1944 underlying the same for facts of the case. Accordingly P.W.D. informed the Bandra Municipality that in the absence of proof to the effect that both the Bombay & and the Bandra Municipalities have legally agreed to clause 13 of the draft agreement at p. 1 ante, the Chief Engineer to the Govt. of Bombay cannot act as an arbitrator in the dispute. The ~~Present~~ President of the Bandra Municipality has now forwarded a copy of the Collector's letter dated 14-11-1944 and states that the draft agreement approved by his Municipality has already been forwarded to the Collr. B.S.D. and that the same is still with the Commr. M.C. He therefore requests P.W.D. to proceed with the ~~Commr. for~~ M.C. arbitration if these facts go to show the legal binding of his Municipality and the Bombay Municipality to the agreement in question P.W.D. states that, in the circumstances, the Chief Engineer cannot act as an arbitrator unless the agreement has been executed between the two Municipalities and also by Govt. The papers are shown U. ~~officially~~ olly to the Solicitor to Govt. with reference to 'A' on page 27 ante before giving any reply. The Solr. has passed on the papers to A Branch for being dealt with in the branch.

3. The R.L.A. in his opinion No. 5651, dated 11. 3.1944 has already advised that in the absence of any proof that both the Municipalities have agreed to the arbitration clause, the Chief Engineer cannot act as an arbitrator. The fact that the draft of the agreement is appoved by the Bandra Municipality and is forwarded to theCollector B.S.D. and the Commr. N.D. is not relevant as proof to show that both the Municipalities have agreed to the arbitration clause in the draft agreement. In the absence of any proof to show that the Bombay Municipality have agreed to aribtration, the Chief Engineer cannot act as an arbitrator in the dispute. The view taken by the P.W.D. in para. 3 of its note at p. 28 ante is correct.

P.S.Nadkarnt.

Id/-
23/1

I agree

papers may be seen and returned.

R.T.K.
24/1

R.L.A.

Id/-

P.N.M.
27/1/45

URW P W.D No 882/29-1-45

Office of the R.L.A.

The facts stated in the letter of the President, Bandra Municipality at page 27 ante were taken into consideration on the last occasion when the papers were returned to P.W.D. with this office U.O.R. No. 882 dated 29th January 1945 agreeing with the view taken by that Department in its office note dated 3rd January 1945 at p. 29 ante. A reply in terms of para. 3 of P.W.D. note dated 3rd January 1945 to the President is unobjectionable and may issue.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 1316 dated the 14th Feb., 1945.